

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 1:12-CR-132

v.

HON. ROBERT HOLMES BELL

ANDREW PENALOZA,

Defendant.

MEMORANDUM OPINION AND ORDER

Defendant Andrew Penaloza has filed a motion for modification or reduction of sentence (ECF No. 1373) pursuant to 18 U.S.C. §3582(c)(2) on the basis of Amendment 782 of the United States Sentencing Guidelines, made retroactive by the Sentencing Commission.

Section 3582(c)(2) permits a court to reduce the term of imprisonment of a defendant who has been sentenced based on a sentencing range that has subsequently been lowered by the Sentencing Commission. 18 U.S.C. § 3582(c)(2). Amendment 782 of the United States Sentencing Guidelines reduced by two levels the offense levels assigned to the quantities that trigger the statutory mandatory minimum penalties in U.S.S.G. §§ 2D1.1 and 2D1.11. These modifications were made retroactive effective November 1, 2014. U.S.S.G. § 1B1.10.

The Probation Department filed a sentence modification report on September 11, 2015 (ECF No. 1543). In its report, the probation department recommended the defendant is eligible for reduction in sentence based on defendant currently being an inmate, USSG § 2D1.1 was used in the guideline calculations, and the guideline range applicable to the defendant subsequently has been

lowered as a result of the retroactive amendment to the Sentencing Guidelines (782). A reduction of sentence is consistent with the policy statements of the U.S. Sentencing Commission. Counsel for the defendant and the government have filed responses to the Sentence Modification Report and have no objections to the report or its recommendation.

NOW THEREFORE, IT IS HEREBY ORDERED that Defendant's motion for modification of sentence (ECF No. 1373) pursuant to 18 U.S.C. § 3582(c)(2) is **GRANTED**. Defendant Andrew Penaloza's sentence shall be reduced to **90 months** imprisonment, effective November 1, 2015. An order effectuating the sentence reduction shall issue forthwith.

Dated: October 2, 2015

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE